

# EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
CHARLOTTSVILLE DIVISION

BABY DOE, *et al.*,

Plaintiffs,

-v.-

JOSHUA MAST, *et al.*,

Defendants,

CIVIL NO: 3:22-cv-00049-NKM-JCH

**DECLARATION OF JOHN M. GAUGER**

Pursuant to 28 U.S.C. § 1746, I, John M. Gauger, declare as follows:

1. My name is John M. Gauger. I am not a party to the above-captioned litigation. I am an adult citizen of the United States and a resident of the Commonwealth of Virginia. I am competent to testify as to the matters herein, all of which are based upon my personal knowledge, information, and belief.

2. I have been employed with Liberty University (“University”) since 2009 and currently hold the title, Chief Information Officer and Executive Vice President of Analytics.

3. The University has in place an Acceptable Use Policy (“IT Policy”) for all of its information systems, including, but not limited to, its recognized email system. While the IT Policy is subject to modification from time to time, the matters discussed herein have been in place since June 2018.

4. In my capacity as Chief Information Officer and Executive Vice President of Analytics, I am the individual ultimately responsible for enforcing and protecting the University’s IT Policy.

5. The IT Policy provides that emails “must be treated as confidential by other students

or employees and accessed only by the intended recipients.” The IT Policy also provides that “no person is permitted to retrieve or read [emails] not sent to them” without prior authorization.

6. While the IT Policy requires all users to agree that the University owns all data that is transmitted or stored through the University email system, and that the University has the right to audit and/or monitor this data, the University has a standard practice of not actively monitoring or accessing the emails of students, alumni or employees unless the University is required by law to access the emails or the University is investigating a potential violation of University policy.

7. Additionally, I am aware that the University employs lawyers in its School of Law, Office of Legal Affairs, and in other capacities who use University email in providing legal services to persons and entities other than Liberty University from time to time, often in furtherance of the Virginia State Bar’s *pro bono* goals. When the matter is raised or the University is otherwise made aware, its policies and practices will generally recognize and protect the confidentiality and privilege associated with attorney-client communications and attorney work product doctrine in so far as it would apply to data in the University’s email system, just as it would respect such confidentiality and privileges for physical paper documents and files.

I declare (or certify, verify, or state) under the penalty of perjury that the foregoing is true and correct.

Executed on the 20th day of February 2024.



John M. Gauger